

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 12, 2009

Ref. No.: RPS-7425
PSF No.: 08HD-139

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

HAWAII

Rescind Prior Board Action of February 27, 2009 (D-6), to Rescind Its Prior Board Actions of October 24, 2008 (D-7), Issuance of Revocable Permit to Mahalo Broadcasting, LLC, Permittee; Forfeiture of Revocable Permit No. S-7425 to Skynet Hawaii LLC, Kalaoa, North Kona, Hawaii, Tax Map Key: 3rd/ 7-3-49: 38.

BACKGROUND:

At its meeting of April 22, 2005, Item D-6, the Board of Land and Natural Resources approved the cancellation of Revocable Permit No. S-7139 to Big Island Radio and Issuance of Revocable Permit No. S-7425 to Skynet Hawaii, LLC.

At its meeting of October 24, 2008 (D-7), the Board approved the cancellation of Revocable Permit No. S-7425 to Skynet Hawaii LLC and Issuance of new Revocable Permit to Mahalo Broadcasting, LLC. (**EXHIBIT A**)

At its meeting of February 27, 2009, Item D-6, the Board of Land and Natural Resources rescinded its prior actions of October 24, 2008, Item D-7, Issuance of new Revocable Permit to Mahalo Broadcasting, LLC, and Termination of Revocable Permit No. S-7425 to Skynet Hawaii LLC. The actions were rescinded because Mahalo Broadcasting failed to maintain current rental payments. Mahalo Broadcasting would generally make its payments just before the end of the cure period, following a notice of default. However, payments completely ceased as of August 2008. Mr. Daniel Deeb, Station Manager, made repeated promises to bring the rent current, but the payments never materialized.

On the day of the Land Board Meeting of February 27, 2009, staff got a call from a James Walker of Orlando Florida, co-owner of Mahalo Broadcasting, LLC, to apologize for the mishandling of the State lease account. I explained to Mr. Walker that his call was too late as the Land Board already made its decision to rescind its prior actions to approve a permit to Mahalo Broadcasting as recommended. Mr. Walker explained that he was just made aware of the account status and reprimanded his Station Manager for failure to meet its contractual obligations and mismanagement of the State lease. He wishes to

meet its contractual obligations and mismanagement of the State lease. He wishes to appeal and plead with the Land Board to reconsider its decision to rescind its prior actions of October 24, 2008. Mr. Walker explained that Mahalo Broadcasting failed to communicate to DLNR their financial challenges due to unforeseen circumstances in the declining economy, rise in electric rates, and diminished payments of receivables from businesses owing them money due to a slow-down in client's business or due to bankruptcy. As a result, Mahalo Broadcasting has experienced a cash flow problem and was in the process of finalizing the closing of a loan with proceeds for its operating costs.

On April 6, 2009, a payment of \$2,000 was made, and on April 30, 2009, a check for \$5,150.00 was received to bring the account current. Mr. Walker assured staff that the account would be properly maintained hereafter, keeping the rental payments current. A Liability Insurance Certificate is in file, scheduled to expire on October 19, 2009. Mahalo Broadcasting request a reinstatement of the October 24, 2008 Board action approving the issuance of a month-to-month revocable permit for the radio tower site.

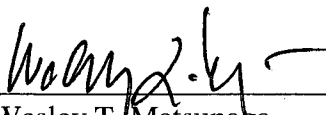
Currently, there is no higher or better use of the subject site. The synchronous radio towers are of no use or value to other radio stations. Should Mahalo Broadcasting not retain a revocable permit over the site, the towers would need to be demolished. As there are no other requests, plans, or use for the subject property, it would be in the State's best interest to grant Mahalo Broadcasting another chance to utilize the property to generate income for the State.


Since rent is now current, staff has no objections and recommends that the Board rescind its prior actions of February 24, 2009, Item D-7, allowing reinstatement of the issuance of a revocable permit to Mahalo Broadcasting, LLC.

RECOMMENDATION: That the Board:

- A. Rescind its prior actions of February 27, 2009, Agenda Item D-6.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent 

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 24, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 08HD-139

HAWAII

Termination of Revocable Permit No. S-7425 to Skynet Hawaii, LLC; Issuance of
Revocable Permit to Mahalo Broadcasting, LLC, Kalaoa, North Kona, Hawaii,
Tax Map Key: 3rd/7-3-49: 38

APPLICANT:

MAHALO BROADCASTING, LLC, whose business and mailing address is 74-5605~
Luhia Street, Suite #B-7, Kailua-Kona, Hawaii 96740.

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands at Kalaoa, North Kona, Hawaii, identified by Tax Map Key:
3rd/7-3-49: 38, as shown on the attached map labeled Exhibit A.

AREA:

4.00 acres, more or less.

ZONING:

State Land Use District:	Conservation
County of Hawaii CZO:	Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
October 24, 2008

D-7

Exhibit A

BLNR - Issuance of RP
to Mahalo Broadcasting, LLC.

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DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-7425, Skynet Hawaii, LLC, Permittee, for radio tower and accessory building site purposes.

CHARACTER OF USE:

Radio tower for synchronous transmission and accessory building site purposes.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

To be determined by staff appraiser, subject to review and approval by the Chairperson.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states " Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion of change of use beyond that previously existing."

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO
Registered business name confirmed:	YES <u>x</u>	NO
Applicant in good standing confirmed:	YES <u>x</u>	NO

REMARKS:

At its meeting of August 28, 1987, Item F-1-f, the Board of Land and Natural Resources approved the issuance of Revocable Permit No. S-6539, to Big Island Broadcasting Company, Ltd., for radio synchronous transmitter towers and accessory building site. At

Exhibit A

its meeting of May 8, 1987 (Item H-2), the Board approved Conservation District Use Permit HA-12/15/86-1963, for construction of towers and on November 20, 1987, approved HA-5/27/87-2034, for installation of propane generator.

At its meeting of June 13, 1997, Item D-31, the Land Board approved the cancellation of Revocable Permit S-6539 to Big Island Broadcasting; and Issuance of Revocable Permit No. S-7139, to Big Island Radio for similar purposes.

At its meeting of April 22, 2005, Item D-6, the Board of Land and Natural Resources approved the cancellation of Revocable Permit No. S-7139 to Big Island Radio and issuance of Revocable Permit No. S-7425 to Skynet Hawaii, LLC.

By letter dated, September 9, 2008, Mr. Dan L. Deeb, General Manager of Mahalo Broadcasting, LLC, requested a revocable permit over the subject premises as he purchased the radio station from Skynet Hawaii, LLC. Mr. Deeb claims at time he purchased the station, he was not made aware that the permit was non-transferable and that a new permit would be required.

A revocable permit is being recommended at this time since the facility already exists on the land and that there is no request for a higher or better use of the land. Staff is of the presumption that the current use in a longer-term disposition would be inappropriate considering the current land developments in the area with potentially greater demands for developable lands in the immediate future. The Department has been working collaboratively with the major adjacent landowners, the Department of Hawaiian Home Lands, the County of Hawaii, and various private developers, to construct new mid-level and mauka/makai connector roads in the area. Such connector roads will dramatically improve accessibility that will increase development potentials. It is also assumed that over time the facility will become obsolete. In the interim, the issuance of a revocable permit will enable HDLO to resume the collection of rents and provide permittee time to seek an alternate site for eventual vacancy of the property and/or decrease the size of the permit area.

Proposed use is allowable under county zoning, which is Open.

Mahalo Broadcasting, LLC, has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

To date, no other requests have been made for the subject property.

OHA had no objections to the request, but noted that the subject land is designated as Section 5(b) Ceded Lands, therefore, it should receive a portion of the revenues generated.

Exhibit A

ELNR - Issuance of RP
to Mahalo Broadcasting, LLC.

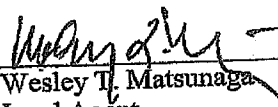
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RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the termination of Revocable Permit No. S-7425 to Skynet Hawaii, LLC., effective on a date to be determined later;
3. Authorize the issuance of a revocable permit to Mahalo Broadcasting, LLC, covering the subject area for purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:


Laura H. Thielen, Chairperson

Exhibit A





Exhibit A